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FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER
No. 1487

On July 16, 1994, this matter was brought before the Arizona Board of Osteopathic Examiners in Medicine and Surgery, for the purpose of reviewing and deliberating upon the Findings of Fact, Conclusions of Law and Recommendation submitted by the Board's Hearing Officer. Respondent was present by telephone conference call and was represented by Mickey Walthall, Attorney at Law. The State was represented by Michael Harrison, Assistant Attorney General, and the Board received legal advice from Diane Huckleberry, Assistant Attorney General with the Solicitor General Section, Office of the Attorney General.

1 Having read and considered the exhibits offered and
2 admitted into evidence and being fully advised in the premises,
3 including the Findings of Fact, Conclusions of Law and
4 Recommendation submitted by its Hearing Officer, the Board now
5 makes the following Findings of Fact and Conclusions of Law:
6

7 FINDINGS OF FACT

8 (1) Respondent is the holder of License No. 0726,
9 authorizing him to engage in the practice of Osteopathic Medicine
10 in the State of Arizona.

11 (2) In 1989, Respondent was indicted by a grand jury
12 alleging seventeen counts of theft and facilitation of theft. The
13 basis for the indictment arose from Respondent's participation in
14 Health Care Providers of Arizona, an AHCCCS plan contractor.

15 (3) In July, 1992, Respondent entered in an agreement
16 whereby he would plead guilty to three charges alleged in the
17 indictment.

18 (4) On July 3, 1992, Respondent's plea agreement was
19 accepted by the Court. The factual basis for that acceptance was
20 that Respondent ordered equipment to perform cosmetic treatments in
21 the form of liposuction equipment, dermabrasion equipment and
22 surgical knife equipment, using funds provided to Health Care
23 Providers of Arizona by AHCCCS and, since AHCCCS does not cover
24 cosmetic procedures, Respondent's conduct constituted facilitation
25 of theft.

26 (5) After accepting the plea agreement, Respondent was
27 found guilty of three undesignated Class VI offenses and was
28

1 placed on supervised probation for a period of three years.
2 Respondent was also ordered to pay restitution in the sum of
3 \$8,619.40. Respondent was also required to make reimbursement
4 payments, at the rate of \$1,400.00 per month, beginning September,
5 1992, until the sum of \$50,000.00 is paid. Respondent was also
6 required to pay attorney fees in the sum of \$50,000.00 at the rate
7 of \$500.00 per month. Respondent was also fined the sum of
8 \$14,000.00, payment of which was to be made on or before November
9 2, 1992 and deposited into the Attorney General's Anti-Racketeering
10 Revolving Fund.

11 (6) On October 19, 1992, Respondent wrote to the Board
12 in which he acknowledged his convictions. Respondent wrote that
13 "Three of the Class 3 (theft felonies) were later changed to Class
14 6. These open-ended Class 6 offenses (facilitation of theft) are
15 considered minor and, as a matter of fact, are misdemeanors (such
16 as traffic tickets) in most states". Respondent also wrote: "The
17 State dropped the initial 17 charges and I agreed to the last three
18 charges, which are Class 6, to eliminate a four month costly trial
19 for the State, taxpayers, as well as for myself. This guilty plea
20 was in reference to co-signing a check that was utilized in three
21 separate purchases of medical equipment. The total amount that the
22 three of us pled guilty to was \$8,600+ dollars in a (sic) 18
23 million dollar program. I, today, feel that this equipment which
24 was used for non-cosmetic situations on AHCCCS (sic) participants
25 was not in violation of any law. . . I believe that in no way have
26 I been accused of anything that would be injurious to treatment of
27 patients, nor could affect my continuous (sic) of practicing my
28

1 chosen field of Osteopathic medicine".

2 (7) On February 23, 1994, the Board filed a complaint
3 against Respondent, alleging unprofessional conduct as a result of
4 his criminal conviction. A hearing was then set for March 25,
5 1994, which hearing was later postponed and rescheduled to May 20,
6 1994.

7 (8) On March 30, 1994, Respondent and his attorney
8 appeared in Court the State had alleged that Respondent had not
9 complied with the terms of his probation in respect to the
10 financial obligations imposed by the terms of probation. The
11 probation officer informed the Court that "Defendant (Siegel) has
12 been on probation since June of 1992 and has been very resistant to
13 comply with his financial terms. The Court found Defendant does
14 not have the ability to pay based on his income of \$9,900 plus the
15 salary he received in January of \$52,000. At the current point,
16 Doctor Siegel is \$22,910 behind on his financial obligations.
17 Doctor Siegel has been a difficult client to supervise mainly
18 because he still denies any guilt for his actions even though he
19 entered a plea to the charges in this cause number. He was ordered
20 to pay financial obligation at the time of his sentencing in July
21 of 1992, for a second time in September of 1992 and a third time in
22 January of 1993, all by Judge Howe, but the Defendant still did not
23 comply".

24 (9) The Court refused to reinstate Respondent's
25 probation by stating: "Let me tell you, counsel, before we go
26 further, in reviewing this Court file and being made aware of the
27 numerous Court appearances regarding payment of these moneys, the
28

1 volumes of pleadings and paperwork that have been filed regarding
2 payment of these moneys, my first inclination if not to reinstate
3 Dr. Siegel on probation. I think it more than abundantly clear
4 that this government, the people of Arizona have been spending
5 countless Court hours, professional hours and tons of money to
6 enforce its rulings. Doctor Siegel is an educated man. He knows
7 what the Judge's orders were. He knew what the criminal law is,
8 and these rules have to be followed. Doctor Siegel had made it
9 clear that he will go to absolutely every extent possible to avoid
10 this Court's lawful orders".

11 (10) On April 27, 1994, Respondent was sentenced to a
12 term of incarceration for one and one-half years, ordered to
13 complete one thousand hours of community service and the financial
14 terms were reaffirmed.

15
16 CONCLUSIONS OF LAW
17

18 (1) This matter is within the jurisdiction of the
19 Arizona Board of Osteopathic Examiners in Medicine and Surgery
20 pursuant to ARS, §32-1901 et. seq. and the regulations promulgated
21 thereunder.

22 (2) Respondent's criminal conviction in July, 1992 on
23 three counts of facilitation of theft, for which he was placed on
24 probation and ordered to pay restitution, fines and costs,
25 constitutes a violation of ARS, §32-1854 (2) and (38).

26 (3) Respondent's actions of unprofessional conduct
27 constitute ground on which the Board may impose discipline.
28

ORDER

Pursuant to the authority vested in the Board by A.R.S. §32-1855(J), the Board voted on July 16, 1994, to enter the following order for disposition of this matter.

(1) Respondent's license to practice medicine as an Osteopathic physician in the State of Arizona is suspended for a minimum of two (2) years or the duration of his incarceration in a penal institution, whichever is the longer period of time. And, thereafter, Respondent may file a written request to the Board seeking reinstatement of the license which shall be reviewed and considered by the Board at a Board scheduled public meeting. The determination of the Respondent's qualifications for reinstatement of license shall be dependent upon Respondent's compliance of all terms and conditions set forth in this order and all applicable statutory or administrative rule requirements governing to the practice of medicine in the State of Arizona.

(2) Respondent's failure to comply with the requirements of this order shall constitute ground for either denial of the request for reinstatement of license or initiating disciplinary action for unprofessional conduct, as defined at A.R.S. §32-1854(26).

(3) Upon expiration of the term of license suspension, Respondent may submit an application for reinstatement of the license with the Board. However, as a condition for reinstatement of the license, Respondent must take and pass (i.e., score at least 75% with a weighted average) the "Special Purpose Licensing

1 Examination" developed by the National Board of Medical Examiners
2 or an alternative and comparable examination designated by the
3 Board.

4 (4) While Respondent's Board license is suspended he
5 shall notify the Board by correspondence within ten (10) days of
6 any change in the status and/or conditions of his court ordered
7 probation, incarceration or parole. It is Respondent's
8 responsibility to maintain proof of mailing of notification to the
9 Board.

10 (5) In the event that Respondent's license to practice
11 Osteopathic medicine is reinstated, he shall be placed on probation
12 for a period of five (5) years. The conditions of said probation
13 shall be subject to the following conditions and restrictions:

14 (a) Respondent shall comply with all federal and state
15 statutory and administrative rules applicable to
16 and/or regulating the practice of medicine; and,
17 Respondent shall remain in compliance with all
18 terms of the criminal probation or parole orders
19 and conditions applicable to him; and,

20 (b) Respondent shall complete an additional twenty
21 (20) hours of continuing medical education
22 (hereinafter, "CME") during each calendar year of
23 probation in addition to the minimum requirements
24 of Board statute, i.e., A.R.S. §32-1825; and,
25 Respondent shall submit to the Board, by
26 December 30 of each year, documentary proof of
27 attendance and completion of the requisite CME.
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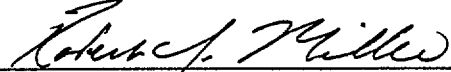
1 Said CME requirement does not have to be completed
2 while Respondent's license is suspended; and,

3 (c) Respondent shall appear as requested before the
4 Board to review his professional conduct; and,
5 Respondent shall be provided notice of the Board's
6 desire to meet with Respondent at least five (5)
7 business days prior to said meeting.

8 (d) At the Board's discretion the Respondent's ability
9 to prescribe controlled substances may be
10 restricted by the Board for all or part of the
11 duration of the term of probation by supplemental
12 order hereto, if and when Respondent's license is
13 reinstated and he is placed on probationary
14 status.

15 ENTERED this 21st day of July, 1994 and effective ten
16 (10) days from date of mailing or personal delivery to Respondent,
17 whichever occurs first.

18 ARIZONA BOARD OF OSTEOPATHIC
19 EXAMINERS IN MEDICINE & SURGERY

20 

21 Robert J. Miller, Ph.D
Executive Director

22 COPY mailed by Certified Mail
this 22nd day of July, 1994, to:

23 Berton Siegel, D.O.
24 Inmate #105086
25 ASPC
San Pedro Unit
Perryville, AZ 85338
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3 COPY of the foregoing mailed
this 22nd day of July, 1994, to:

4 H.M. Walthall
5 Attorney at Law
701 W. Southern, Ste. 202
6 Mesa, AZ 85210

7 COPY of the foregoing mailed by
Interagency Mail to Board Counsel
8 this 22nd day of July, 1994:

9 Michael N. Harrison
Assistant Attorney General
10 1275 W. Washington
Phoenix, AZ 85007
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